Armugam a/l Letchumanan v Tenaga Nasional Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S4–22–1345 OF 2004
LAU BEE LAN J
31 AUGUST 2010

Tort — Damages — Trespass to land and nuisance — Transmission towers or electric pylons erected on plaintiff's land — Plaintiff a Felda settler — Whether plaintiff's occupation of land in expectation of title in 1981 was with permission of Felda — Whether defendant trespassed plaintiff's land — Whether defendant's predecessor, LLN, obtained right of way — Whether plaintiff entitled to claim compensation and damages — Whether LLN only liable to pay Felda for disturbance or damages — Whether any non-compliance of s 53(9A) of the Electricity Act 1949

The plaintiff's claim was based on the tort of trespass and nuisance and for damages for infringement of art 13 of the Federal Constitution. The plaintiff was a settler under the Land (Group Settlement Areas) Act 1960 (Land (GSA) Act) of a land developed by Federal Land Development Authority (FELDA) since 1969 in the area known as Felda Sungai Klah in Perak. The title to the plaintiff's lot was issued on 3 October 1996 and the plaintiff's lot held under Pajakan Mukim No 1804, Lot 5609, Mukim Sungkai, Daerah Batang Radang, Perak measuring an area of 8.098 acres ('the plaintiff's lot'). There were three transmission lines namely, menara A, B and C, running across the said settlement. Part of the menara C transmission lines which was erected in 1981 was within the boundaries of the plaintiff's lot. SP2, the licensed surveyor, in his report confirmed that menara C had 'encroached 6 feet into Lot 5609' and the 'transmission line was 11 feet from the base of the tower into Lot 5609'. The plaintiff contended that the defendant had committed the following acts of trespass on his lot, which trespass was still continuing: (a) two legs of Menara C were built 6ft inside the plaintiff's lot; (b) about 11ft of the transmission lines of Menara C (from the base of the encroaching legs of Menara C) were overhanging and intruding into the plaintiff's lot; (c) the defendant entered into the plaintiff's lot in 2003, 2004 and 2005 and chopped down his trees; in 2005, 100 trees in plaintiff's lot in an area measuring 0.5869 acres were chopped down; and (d) the defendant's employees regularly enter and travelled across the plaintiff's lot to reach Menara A, B and C for the maintenance works of all the 3 towers. The defendant's defence was that the defendant's predecessor, LLN, had lawfully obtained a right of way in 1981 to erect the Menara C on the plaintiff's lot under the Electricity Act 1949. The issues raised, inter alia, was whether the defendant by erecting Menara C on a part of the plaintiff's lot had trespassed onto the plaintiff's lot and whether

compensation should be allowed or payable for felling or lopping of trees within the route of Menara C on the plaintiff's lot.

Held, allowing the plaintiff's appeal with costs to be taxed:

(1) The plaintiff's occupation in expectation of title must be authorised by Felda and that authority may be cancelled by Felda at any time before the title has been registered (s 12(3) read with Second Schedule of the Land (GSA) Act). Considering all the powers of Felda under the provisions of the Land (GSA) Act, this court agreed with the defendant's submission that at the time of the development and until all charges were paid to the state government/Felda, Felda Sungai Klah was still state land vested and administered by Felda and not yet alienated to the individual holders who occupy the area in expectation of title (see para 30).

(2) Premised on the evidence of SD4 and SD6, it was clear that the plaintiff's belief was misplaced as the notice issued to him by Suruhanjaya Tenaga Kawasan Perak was to notify that his activity of planting trees within the route which were more than 8ft posed a danger to the third transmission line (Menara C). Further under s 37(12)(a) of the 1990 Act 'it is an offence to engage in activity in the vicinity of any electrical installation in a manner likely to interfere with any electrical installation or cause danger to any person or property'. In any event, under the proviso to s 58(1) of the 1949 Act, no further compensation shall be allowed or payable for felling or lopping of trees after payment of the compensation under ss 52, 53 or 54 (see paras 58 & 59).

(3) The compensation awarded by the collector of land revenue in respect of Felda Sungai Klah was in accordance to what was demanded by Felda ie, (i) that RM30 is paid for each tree felled, and (ii) that the settlers are provided with electricity. The court found that Felda Sungai Klah was state land. Thus, the compensation made by the collector of land revenue in his order was in accordance with s 52 of the 1949 Act, wherein LLN was only liable to pay Felda for disturbance or damages read together with s 58 of the 1949 Act (see para 63).

(4) The present case concerned a right of way under the 1949 Act and not acquisition of land under the Land Acquisition Act. A distinction has to be drawn because under the former statute, the defendant did not acquire the plaintiff's lot but only a right of way whilst the plaintiff retains the title to the route to Menara C and can utilise the same as long as the plants do not grow beyond 8ft (see para 68).

(5) In relation to plaintiff's claim that there was non-compliance of s 53(9A) of the 1949 Act in that there was no endorsement or notation on the plaintiff's title in respect of the defendant's right of way on the plaintiff's lot, this court adopted the evidence pertaining to Felda Sungai Klah

being divided into 'Blok-Blok' or 'Peringkat'. Further, the evidence shows that the Collector of Land Revenue Batang Padang had conducted an inquiry under the 1949 Act and that s 53(9A) was not in existence then. This court adopts the position taken by the court in *Oakfield Enterprises Sdn Bhd v Tenaga Nasional Bhd* [1998] MLJU 70 that the defendant cannot be faulted for omitting to submit those documents for endorsement as there was no such provision at the material time (see para 75).

[Bahasa Malaysia summary

Tuntutan plaintif di sini adalah berdasarkan tort pencerobohan dan kacau ganggu dan untuk ganti rugi bagi pelanggaran perkara 13 Perlembagaan Persekutuan. Plaintif di sini adalah peneroka di bawah Akta Tanah (Kawasan Penempatan Berkelompok) 1960 ('Akta 1960') tanah yang dibangunkan oleh Lembaga Kemajuan Tanah Persekutuan ('Felda') semenjak 1969 di kawasan yang dikenali sebagai Felda Sungai Klah di Perak. Hak milik kepada lot plaintif dikeluarkan pada 3 Oktober 1996 dan lot plaintif dipegang di bawah Pajakan Mukim No 1804, Lot 5609, Mukim Sungkai, Daerah Batang Radang Perak dengan kawasan seluas 8.098 ekar (lot plaintif). Terdapat tiga rangkaian pemancaran iaitu, Menara A, B dan C, melintasi kawasan penerokaan tersebut. Sebahagian rangkaian pemancaran Menara C yang dibina dalam tahun 1981 adalah dalam sempadan lot plaintif. SP2, juruukur berlesen, di dalam laporannya mengesahkan bahawa Menara C telah 'encroached 6 feet into Lot 5609' dan 'transmission line was 11 feet from the base of the tower into Lot 5609'. Plaintif menghujah bahawa defendan telah melakukan tindakan-tindakan pencerobohan berikut di atas lotnya, di mana pencerobohan tersebut masih berterusan: (a) dua kaki Menara C dibina 6 kaki ke dalam lot plaintif; (b) kira-kira 11 kaki rangkaian pemancaran Menara C (daripada asas kaki Menara C yang mencerobohi) adalah menganjur dan mengganggu lot plaintif; (c) defendan memasuki lot plaintif dalam tahun 2003, 2004 dan 2005 dan menebang pokok-pokoknya; dalam 2005, 100 batang pokok di lot plaintif dalam kawasan seluas 0.5869 ekar telah ditebang; dan (d) pekerja-pekerja defendan selalu memasuki dan berjalan melintasi lot plaintif untuk mencapai Menara A, B dan C untuk kerja-kerja penyenggaraan untuk ketiga-tiga menara tersebut. Pembelaan defendan adalah bahawa pihak terdahulu daripada defendan, LLN telah secara sah memperoleh hak laluan dalam tahun 1981 untuk membina Menara C atas lot plaintif di bawah Akta Elektrik 1949. Isu-isu yang dibangkitkan, antara lain, adalah, sama ada defendan dengan membina Menara C atas sebahagian lot plaintif telah menceroboh ke atas lot plaintif dan sama ada pampasan wajar diberikan atau boleh dibayar untuk penebangan atau pencantasan pokok-pokok di dalam kawasan Menara C atas lot plaintif.

Diputuskan, membenarkan rayuan perayu dengan kos ditaksir:

(1) Pekerjaan plaintif dalam jangkaan memperoleh hak milik mesti

diberikuasa oleh Felda dan kuasa tersebut boleh dibatalkan oleh Felda pada bila-bila masa sebelum hak milik didaftarkan (s 12(3) dibaca bersama jadual kedua Akta 1960). Mempertimbangkan kesemua kuasa Felda di bawah peruntukan Akta 1960, mahkamah bersetuju dengan penghujahan defendan bahawa pada masa pembangunan tersebut dan sehingga kesemua bayaran dibayar kepada kerajaan negeri/Felda, Felda Sungai Klah masih tanah negeri yang terletakhak dan ditabdir oleh Felda dan tidak dipindah milik kepada pemegang individu yang menduduki kawasan dalam jangkaan memperoleh hak milik (lihat perenggan 30).

(2) Berasaskan kepada keterangan SD4 dan SD6, adalah jelas bahawa kepercayaan plaintif adalah salah tanggap kerana notis yang dikeluarkan kepadanya oleh Suruhanjaya Tenaga Kawasan Perak adalah untuk memberikan notis bahawa aktiviti menanam pokok-pokok dalam lingkungan tersebut yang lebih daripada 8 kaki menunjukkan bahaya kepada rangkaian pemancaran ketiga (Menara C). Selanjutnya di bawah s 37(12)(a) Akta 1990 tersebut 'it is an offence to engage in activity in the vicinity of any electrical installation in a manner likely to interfere with any electrical installation or cause danger to any person or property'. Walau bagaimanapun, di bawah proviso kepada s 58(1) Akta 1949, tidak ada pampasan lanjut boleh dibenarkan atau dibayar untuk penebangan atau pemangkasan pokok-pokok selepas membayar pampasan di bawah ss 52, 53 atau 54 (lihat perenggan 58 & 59).

(3) Pampasan yang diawardkan oleh pemungut hasil tanah berkaitan dengan Felda Sungai Klah adalah menurut apa yang diperlukan oleh Felda iaitu (i) bahawa RM30 dibayar untuk setiap pokok yang ditebang; dan (ii) bahawa peneroka-peneroka adalah diperuntukkan dengan elektrik. Mahkamah mendapati bahawa Felda Sungai Klah adalah tanah negeri. Dengan itu, pampasan yang dibuat oleh pemungut hasil tanah di dalam perintahnya adalah menurut s 52 Akta 1949, di mana LLN hanya bertanggungjawab untuk membayar Felda untuk gangguan atau kerosakan dibaca bersama s 58 Akta 1949 (lihat perenggan 63).

(4) Kes ini berkaitan dengan hak laluan di bawah Akta 1949 dan bukan pemerolehan tanah di bawah Akta Pemerolehan Tanah. Perbezaan perlu dibuat kerana di bawah statut yang sebelumnya, defendan tidak memperoleh lot plaintif tetapi hanya hak laluan sementara plaintif masih memiliki hak milik terhadap laluan ke Menara C dan boleh menggunakannya selagi pokok-pokok tidak tumbuh melebihi 8 kaki (lihat perenggan 68).

(5) Berkaitan dengan tuntutan plaintif bahawa terdapat ketidakpatuhan s 53(9A) Akta 1949 di mana tidak ada endorsmen atau notasi di atas hak milik plaintif berkaitan dengan hak laluan defendan atas lot plaintif, mahkamah ini menerima keterangan berkaitan dengan Felda Sungai Klah dibahagikan kepada blok-blok atau peringkat. Selanjutnya,

keterangan menunjukkan bahawa Pemungut Hasil Tanah Batang Padang telah melakukan siasatan di bawah Akta 1949 dan bahawa s 53(9A) tidak wujud pada masa itu. Mahkamah menerima kedudukan yang diambil oleh mahkamah di dalam kes *Oakfield Enterprises Sdn Bhd v Tenaga Nasional Bhd* [1998] MLJU 70 bahawa defendan tidak boleh dipersalahkan kerana tidak mengemukakan dokumen-dokumen tersebut untuk endorsmen kerana tidak ada peruntukan sedemikian pada masa tersebut (lihat perenggan 75).]

Notes

For a case on trespass to land and nuisance, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) para 250.

Cases referred to

Eu Finance Berhad v Lim Yoke Foo [1982] 2 MLJ 37, FC (distd)

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors & Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors [1984] 2 MLJ 123, FC (refd)

Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors [1998] 2 MLJ 158, CA (distd)

Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors [2005] 6 MLJ 289; [2005] 4 CLJ 169, CA (refd)

Oakfield Enterprises Sdn Bhd v Tenaga Nasional Bhd [1998] MLJU 70, HC (refd)

Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors [1982] 1 MLJ 313, FC (folld)

Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v Tenaga Nasional Bhd; Ng Ah Boon (Third party) [2010] 1 CLJ 625, HC (distd)

Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990) [2010] 2 MLJ 155; [2010] 2 CLJ 1, FC (distd)

Legislation referred to

Electricity Act 1949 ss 52, 53, 53(1), (2), (4), (5), (7) 53(9A), 54, 58, 58(1)
Electricity Supply Act 1990 ss 11, 13, 16, 37(12)(a)
Electricity Supply (Successor Company) Act 1990 s 3
Federal Constitution art 13
National Land Code ss 5, 40, 44(1), 78(3)
Land Acquisition Act 1960 s 2
Land (Group Settlement Areas) Act 1960 ss 10, 12(3), 13, 16, 18, 20, 22, 22(1), 36, 38, 38(1), 38(2)(b), (c), (d)

P Lathika (S Thilagavathy with her) (Lathika & Associates) for the plaintiff.
Gurmel Singh (Illiayas) for the defendant.

Lau Bee Lan J:

[1] The appellant/plaintiff, Armugam a/l Letchumanan ('the plaintiff') has appealed against a part of my decision made on 26 May 2010 that did not allow the plaintiff's claim for compensation and damages for the act of trespass on the part of the respondent/defendant ('the defendant'), Tenaga Nasional Bhd ('TNB') by constructing and maintaining the transmission towers or electric pylons and cutting or felling the trees on the plaintiff's said Lot, which is contrary to art 13 of the Federal Constitution.

[2] For completeness I shall state on 26 May 2010 I had ruled upon a balance of probabilities, the court is of the view that the plaintiff has established the act of trespass and nuisance in relation to the issue of the defendant's workers entering and crossing the plaintiff's Lot. The court granted damages to be assessed by the learned registrar (mutually agreed by the parties) in respect of past acts of trespass and nuisance in relation to the entering and crossing of plaintiff's Lot excluding the 'rentis'. As for future acts, the defendant undertook not to enter the plaintiff's Lot to gain access to the 'rentis' without admitting that they have been crossing the plaintiff's Lot. Further, an order was granted that the defendant, whether by themselves or their agents or servants or any of them or otherwise however be restrained from entering, crossing or trespassing onto the defendant's Lot excluding the 'rentis' (prayer 25(iii) statement of claim). Further interest at the rate as prayed (prayer 25(vii)) and costs to be taxed unless otherwise agreed (prayer 25(viii)). Prayer 25(i) was abandoned by the plaintiff and prayer 25 (ii) was not granted.

[3] The plaintiff's claim is based on the torts of trespass and nuisance and for damages for infringement of art 13 of the Federal Constitution. The plaintiff contends the defendant has committed the following acts of trespass on his Lot, which trespass is still continuing:

(a) two legs of Menara C were built 6ft inside the plaintiff's lot;

(b) about 11ft of the transmission lines of Menara C (from the base of the encroaching legs of Menara C) are overhanging and intruding into the plaintiff's Lot. Thus Menara C and its transmission lines encroached about 17ft into the plaintiff's lot;

(c) the defendant entered into the plaintiff's Lot in 2003, 2004 and 2005 and chopped down his trees; in 2005, 100 trees in plaintiff's lot in an area measuring 0.5869 acres were chopped down;

(d) the defendant's employees regularly enter and travel across the plaintiff's lot to reach Menara A, B and C for the maintenance works of all the three towers.

[4] The defendant's defence is that the defendant's predecessor, LLN, has lawfully obtained a right of way in 1981to erect the Menara C on the plaintiff's lot under the Electricity Act 1949 ('the 1949 Act').

[5] The salient undisputed facts in this case are the following. The plaintiff is a settler under the Land (Group Settlement Areas) Act 1960 ('the Land (GSA) Act') of a land developed by Federal Land Development Authority (FELDA) since 1969 in the area known as Felda Sungai Klah in Perak. The title to the plaintiff's lot was issued on 3 October 1996 and the plaintiff's lot is now held under Pajakan Mukim No 1804, Lot 5609, Mukim Sungkai, Daerah Batang Radang, Perak measuring an area of 8.098 acres as per the title, exh P1('the plaintiff's lot').

[6] By a gazette notification dated 30 August 1990 under the Electricity (Successor Company) Act 1990, all the rights and liabilities of Lembaga Letrik Negara (LLN) were transferred to the defendant as the successor company effective 1 September 1990.

[7] There are three transmission lines (Menara A, B and C) running across the said settlement. Two of the transmission lines, 132kV line from Slim River to Sungkai (Menara A) and 132kV from Kalompang to Sultan Idris Yusuf Hydro Station in Woh (Menara B) were erected in 1963. These two transmission lines were erected outside the boundaries of the plaintiff's lot as per the evidence of SD6, Encik Hashim bin Ismail, the senior manager, '(Pengurusan Tanah dan Izin Lalu), Bahagian Perkhidmatan Korporat' TNB. The plaintiff in examination in chief merely said that when he entered his lot at the beginning of 1970, Menara A and B and their transmission lines (six for each tower) were already in existence.

[8] The third transmission line, 275kV from Bukit Beruntung to Batu Gajah (Menara C) was erected in 1981 and part of Menara C and its transmission lines are within the boundaries of the plaintiff's lot. SP2, Mr Wong Yew Kin, the licensed surveyor confirmed in his report (exh P3) Menara C 'has encroached 6ft into Lot 5609' and the 'transmission line is 11ft from the base of the tower into Lot 5609'). SD6 said the defendant's route over the plaintiff's lot measured an area of 0.652 acres or 0.264 hectares as per the charting (exh D35) which the plaintiff in the plaintiff's written submission dated 30 April 2010 ('PWS') referred to as the 'trespass area'.

ERECTION OF MENARA C — WHETHER THERE IS TRESPASS ETC

[9] For purposes of this appeal I shall only be addressing the points appealed against. Firstly, the issue of whether the defendant by erecting menara c on a part of the plaintiff's lot has trespassed onto the plaintiff's lot. The plaintiff

contends that the act of trespass which occurred in 1981 is governed by the 1949 Act whilst the continuous acts of intrusion from 1981 onwards which will continue so long as all three Menara remain in existence is governed by the Electricity Supply Act 1990 (Act 447) ('the 1990 Act') (which repealed the 1949 Act with effect from 1 September 1990).

[10] In its written submission (paras 56—71 of PWS), the plaintiff took issue with the defendant's submission that its entry into the plaintiff's Lot was under s 52 and not 53 of the 1949 Act contradicts the defendant's own witnesses, SD3 (penolong setiausaha LLN at the material time) and SD6 and the documents relied on by them namely exh D26(A–C) (notice under s 53 of the 1949 Act) and the list of persons referred to in the Notice respectively. The alleged contradictions are found in:

(a)
  (i) the evidence-in-chief of SD3 at p 33 notes of proceeding (NOP) where he identified exh P26A as the 'notis LLN kepada pemilik-pemilik tanah yang terlibat dengan pembinaan talian penghantaran tersebut'; issued under the 1949 Act and he had signed it and it was dated 15 July 1978;
  (ii) the evidence in chief of SD3 at p 34 of the NOP that the 'tanah yang akan dimajukan oleh Felda' means 'pembangunan kawasan Felda ini adalah dari tanah yang virgin yang dijadikan ladang-ladang getah';

(b) the evidence under cross-examination of SD3 at p 40 of the NOP who confirmed that the notice at p 64 bundle B (exh P26A) is issued under s 53 of the 1949 Act;

(c) the evidence under cross-examination of SD6 at p 57 transcript of audio recording of proceedings (TARP) that '…Kemasukan dibuat di bawah seksyen 53 Akta Letrik ketika itu'.

[11] Learned counsel for the plaintiff argued (a) It was only in mid stream after cross-examination of SD3 that the defendant completely did an about turn and suddenly took the position that the notice in D26A … was only a 'contoh' whereas para 1 of the covering letter from LLN to the land office (exh D26) reveals that it was intended to the list of persons in exhs 26B and C; (b) the witness statement of SD6 was amended on the last day of trial to convert the 'notis' to a 'contoh notis'; and (c) exh D26 refers to a notice given pursuant to s 53 of the 1949 Act.

[12] As ss 52, 53 and 58 of the 1949 Act are essential, the material parts are reproduced for its full effect:

52 Power to enter on State land for purposes of Board installation —

For the purposes of constructing a supply line for any Board installation, the Chairman or any person authorized by him in that behalf may, at all reasonable times, enter upon any State land and may, subject to the approval of the State Authority, erect in or upon that State land such posts and other apparatus as may be necessary or proper for the purposes of the installation, and may carry out all necessary works in connection therewith, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purposes:

Provided that –

(a) when any such work interferes with improvements, buildings, growing trees or crops, the Board shall pay compensation in accordance with section 58 for disturbance or damage; and

(b) where the land is occupied under a licence for temporary occupation, the compensation shall be paid to the occupant under the licence, and where the land is occupied under an approved application, such compensation shall be paid to the applicant recorded in the roll of approved applications, by whatever name such roll is called in the State wherein the land is situate.

53 Power to enter on land for purposes of construction

(1) Subject as hereinafter provided, whenever it is necessary so to do for the purpose of installing any system of distribution of energy under this Act, the Board may lay, place or carry on, under or over any land, other than State land, such supply lines and may erect in or upon any land, other than State land, such posts and other apparatus as may be necessary or proper for the purposes of the Board installation and may take such other action as may be necessary to render the installation safe and efficient, paying full compensation in accordance with section 58 to all persons interested for any disturbance, damage or disability that may be caused thereby; the compensation may include an annual payment for land used for the purpose of the posts or other apparatus.

(2) Before entering on any land for the purpose specified in subsection (1), the Board shall give notice stating as fully and accurately as possible the nature and extent of the acts intended to be done. The notice shall be substantially in the form set out in the Fourth Schedule, and shall specify a date upon which the Collector of Land Revenue will enquire into any objections that have been made as hereinafter provided.

(3) The aforesaid notice shall be given —

(a) in the case of alienated land, to the registered owner or occupier;

(b) in the case of reserved land, to the officer or other person in charge of the reserved land or, in default of any such officer or person, to the Collector of Land Revenue,

and may be sent by registered post or left at the usual or last known place of abode of the person to whom it is to be given or served by the Collector of Land Revenue at the expense of the Board, as the case may be, either in the manner hereinbefore provided or in the manner provided for the service of notices by any written law relating to land in force in the State where the land is situate.

(4) Any of the persons mentioned in subsection (3) may, within fourteen days of the receipt of the notice therein referred to, lodge an objection to the intended acts of the Board or licensee, as the case may be. The objection may be made to the Collector of Land Revenue, either verbally or in writing, and the Collector shall give notice of the objection to the Board.

(5) If no objection is lodged within the time limited for that purpose by subsection (4), the Board may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (2).

(6) If an objection is lodged and is not withdrawn before the date fixed for the hearing thereof, the Collector of Land Revenue shall hold an enquiry, giving all parties an opportunity to be heard.

(7) Upon the conclusion of the enquiry, the Collector of Land Revenue may, either unconditionally or subject to such terms, conditions and stipulations as he thinks fit, make an order authorizing or prohibiting any of the acts mentioned in the notice given under subsection (2); and any party who is dissatisfied with the Collector's order may appeal against such an order to the State Authority who may then uphold, set aside or vary the order upon such terms, conditions and stipulations as it thinks fit.

(8) The State Authority may, if it thinks fit, in lieu of upholding, setting aside or varying the order under subsection (7), direct the acquisition of any land or part of any land included in a notice given under subsection (2).

(9) The decision of the State Authority under this section shall be final.

58 Compensation payable under sections 52, 53 and 54

(1) The amount of compensation, if any, payable under section 52, 53 or 54 shall be assessed by the Collector of Land Revenue after such enquiry as he shall deem sufficient:

Provided that no further compensation shall be allowed for the felling or lopping of trees or removal of vegetation where that action is necessary for the maintenance of the installation and the trees or vegetation have grown or been allowed to grow since the payment of compensation under section 52, 53 or 54 in such a manner as to obstruct or interfere with the electric supply lines or posts or apparatus:

Provided further that no compensation shall be payable by the Board in respect of any tree within fifty feet of the centre line of any road constructed or maintained by any Government in the States of Malaya or by any local authority unless it is proved that the tree was in existence prior to the construction of the road.

(2) Any person interested who is dissatisfied with the Collector's assessment may, appeal to the State Authority whose decision shall be final".

[13] SD3, who was the person responsible for obtaining 'izin lalu bagi talian-talian penghantaraan letrik LLN bagi merata negeri' has testified fail No LLN10/10/510 concerned the application to obtain 'izin lalu' for, inter alia,

'aliran elektrik 275kV dari Rawang ke Chenderiang Daerah Batang Padang' (Menara C). According to SD3, the process of obtaining 'izin lalu', involved (NOP at pp 32–33):

> Pada ketika itu LLN akan mendapatkan senarai pemilik-pemilik dari pejabat tanah di mana talian hendak didirikan. Selepas mendapat senarai pemilik-pemilik LLN akan menyediakan notis untuk disampaikan kepada pemilik-pemilik berkenaan tentang hasrat LLN untuk mendirikan talian elektrik berkenaan. Notis-notis berkenaan akan dimajukan kepada pejabat tanah yang berkaitan untuk diserahkan kepada mereka yang berkenaan. Pejabat tanah akan menyerahkan kepada pemilik tanah. Dalam notis ada disebut perbicaraan akan diadakan oleh pemungut hasil tanah untuk menetapkan pampasan jika ada.

[14] The evidence (of SD3 at pp 32 line 30 – 33, 34 and 35 (examination-in-chief) and at pp 39–40 (cross-examination) shows that LLN prepared a list (exhs D26, D26B and D26C of parcels of land involved in the erection of the third transmission line (Menara C)) together with a 'contoh' notice under s 53 of the 1949 Act which was sent to the collector of land revenue together with the route plan with instructions to the same to serve the notices to the owners of the parcels of land described in the list. Among the parties listed in the list is described as 'TK' which appeared several times which means 'Tanah Kerajaan'.

[15] As to the status of the land and held under the land (GSA) Act, SD6, pengurus kanan (pengurusan tanah dan izin lalu) TNB in examination-in-chief (at pp 45–46 TARP) also confirmed no notice is required to be issued under the 1949 Act for state land but a notice is required to be issued for alienated land. However based on the factual matrix of this case, the notice was nevertheless served because 'Dari segi pentadbiran, notis dikeluarkan kepada Felda kerana mereka adalah pengusaha rancangan kerana mereka mengelolakan rancangan di bawah Akta Group Settlement Act…'

[16] It is also in evidence that the individual parcels of land in Felda Sungai Klah were not provided with a lot number as the survey was still pending and the area was divided into either 'BLOK' or 'Peringkat' the plaintiff's Lot before 1996 (exhs D31, D34A and D34C at pp 2–3 bundle). Exhibit D36, a charting of the land in1978 did not identify the plaintiff's Lot or any other lot in Rancangan Sungai Klah as the land was yet to be surveyed. In comparison, exh D35 is a charting done in 2006 identifying the lots in the areas of the three transmission lines.

[17] Further as to the reason why no notices were issued to the settlers, SD5, Tuan Sheikh Abdul Hadi bin Sheikh Omar, who held the post of 'Pengarah Tanah Felda' on 4 January 2010, in re-examination (at p 31 TARP) stated:

PCD Kenapakah peneroka-peneroka tidak diberitahu oleh Felda berkenaan perbicaraan ini ataupun notis ini, notis yang dinyatakan disini, tahun 1981, kenapa?

SD5 Kerana di, mengikut Akta Tanah, bagi kawasan yang belum diberi milik kepada peneroka, diletakhak kepada Felda untuk menguruskan.

PCD Oleh itu?

SD5 Oleh itu Felda tidak memberitahu pada peneroka terlibat pada itu.

[18] According to SD3 permission was obtained from Felda for LLN to 'menjalankan kerja-kerja yang bersangkutan seperti mengira pokok-pokok yang terlibat dan membersihkan kawasan rentis' vide letter dated 3 May 1979 written by him to Felda (exh D27 at pp 67–68 bundle B). He informed Felda 'LLN akan membayar pampasan kepada Felda atau atas nasihat Felda kepada peneroka-peneroka sendiri bagi kerosakan harta benda yang diakibatkan oleh pembinaan ini … pampasan akan ditaksirkan oleh Pemungut Hasil Tanah di mana letaknya tanah yang berkenaan' (exh D27).

[19] SD3 testified vide a letter dated 26 May 1979 (exh D28 at p 69 bundle B), Felda had no objection to LLN's request for the construction of the transmission line (Menara C) subject to the condition (i) the settlers are provided with electricity supply and (ii) compensation of RM30 per tree is given for each tree cut down in Felda Sungai Klah. SD3 responded to exh D28 vide his letter dated 13 June 1979 (exh D29 at p 70 bundle B) informing Felda 'kadar pampasan … mengikut Seksyen 58 Akta Letrik, yang mana sebarang pampasan adalah ditetapkan oleh Pemungut Hasil Tanah, Tapah'.

[20] The evidence of SD3 is supported by SD5, who testified 'Rancangan Felda Sungai Klah' which included the plaintiff's Lot was vested in Felda pursuant to the Lands (GSA) Act and by the same statute managed the same. Regarding exh D28, SD5 stated in evidence-in-chief at p 3 (bottom) through p 4 TARP:

PCD Tuan Sheikh, secara intipati surat ini. Boleh Tuan Sheikh menerangkan intipati surat ini.

SD5 Intipati surat ini mengandungi Felda tiada halangan untuk membenarkan Lembaga Letrik Negara dengan syarat peneroka-peneroka diberi bekalan letrik.

PCD Ada apa-apa syarat lain berkenaan dengan Felda Sungai Klah?

SD5 Syarat-syarat lain yang dinyatakan dalam surat ini ialah Felda meminta supaya kadar pampasan dibayar.

PCD: Bagi Sungai Klah, berapakah kadar pampasan yang diminta melalui surat ini oleh Felda daripada Lembaga Letrik Negara?

SD5: Bagi Felda Sungai Klah, Felda meminta pampasan RM30.00 sepokok.

PCD: Manakah ianya di. Boleh Tuan Sheikh mengesahkan di manakah perkara ini dinyatakan?

SD5: Perkara ini dinyatakan dalam paragraph kedua ayat yang ketiga terakhir.

PCD: Surat ini surat bertarikh. Boleh beritahu Mahkamah bertarikh apa?

SD5: Surat ini bertarikh 26 Mei 1979.

[21] Further SD5 testified (at pp 8–12 in examination-in-chief) on the enquiry conducted by the collector of land revenue and the payment and acknowledgment of the compensation of RM223,270 from Felda to LLN as evident from the receipt from the former to the latter dated 8 April 1981(exh D30).

[22] Then at pp 31 and 32 of the TARP, regarding exhs D28 and D31, SD5 testified in re-examination:

PCD: Ini adalah surat daripada Felda bagi, yang mencadangkan, ya, yang mensyorkan bahawa kadar pampasan Sungai Klah adalah RM30.00 sepokok, betul?

SD5: Betul.

PCD: Dan satu lagi syarat yang diletakkan adalah bahawa pihak Felda, pihak LLN memberikan bekalan electricity.

SD5: Ya.

PCD: Kepada semua.

SD5: Ya.

PCD: Adakah kedua-dua tuntutan ini dipenuhi?

SD5: Ya.

PCD: Melihat kepada dokumen D31, ya, perintah. Berapa kadar sepokok yang dibayar kepada Felda berkenaan dengan kawasan yang terlibat di Felda Sungai Klah?

SD5: RM30.00 sepokok.

PCD: Adakah ianya memenuhi tuntutan pihak Felda?

SD5: Ya, memenuhi tuntutan Felda.

PCD: Adakah bekalan letrik diberikan?

SD5: Ya.

PCDA: Adakah pihak LLN mengalami kos bagi mendirikan pasarana rancangan Felda?

SD5: Ya.

PCDB: Betul?

SD5: Ya, betul.

[23] Further regarding the same matter, SD6 testified during examination-in-chief in his answers to Qs 20, 21, 22 and 23 of the WSSD6:

S20: Saya merujuk kepada [ms 69, (IDB)], bolehkah anda mengenalpasti dokumen ini dan menjelaskan isi kandungannya kepada Mahkamah?

J: Ya, dokumen ini adalah surat bertarikh 26.05.1979 dari pihak Pengarah Besar Felda yang ditandatangani oleh Encik A. Rahim Mohamad bagi pihak Felda sebagai jawapan kepada surat LLN yang bertarikh 03.05.1979. Diantara lain, surat ini mengesahkan bahawa Felda tiada halangan bagi cadangan pembinaan Talian 275kV tersebut di atas tanah di dalam kawasan Felda Trolak Utara, Trolak Selatan dan Felda Sungai Klah asalkan peneroka-peneroka diberi bekalan elektrik dan kadar pampasan yang dikemukakan oleh Felda bagi kawasan Felda Sungai Klah adalah RM30.00 bagi sebatang pokok getah.

S21: Adakah LLN memberi sebarang jawapan kepada surat Felda bertarikh 26.05.1979 tersebut?

J: Ya, jawapan surat Felda tersebut telah di berikan oleh LLN melalui surat bertarikh 13.06.1979 yang ditandatangani oleh Encik Mohd Nasir Bin Haji Mohd Said bagi pihak Setiausaha LLN [ms 70, (IDB)]. Secara ringkasnya LLN telah menyatakan di dalam surat bertarikh 13.06.1979 tersebut bahawa kadar pampasan bagi ketiga-tiga rancangan Felda yang terlibat di dalam laluan Talian 275kV tersebut akan ditetapkan oleh Pemungut Hasil Tanah mengikut Seksyen, 58, Akta Letrik 1949. Surat ini juga menyatakan bahawa jika pihak Felda tidak berpuashati dengan taksiran pampasan oleh Pemungut Hasil Tanah, pihak Felda boleh mengemukakan rayuan kepada Pihak Berkuasa Negeri melalui Pemungut Hasil Tanah.

S22: Daripada rekod-rekod di dalam Fail LLN tersebut, bolehkah anda menerangkan sama ada sebarang penyiasatan ada dibuat berkenaan tanah-tanah di dalam rancangan Felda Trolak Utara, Felda Trolak Selatan dan Felda Sungai Klah yang terlibat di dalam laluan Talian 275kV tersebut?

J: Ya, Pemungut Hasil Tanah, Daerah Batang Padang, Tapah ada membuat penyiasatan pada 27.01.1981 berkenaan tanah-tanah yang tersebat dengan laluan Talian 275kV tersebut di kawasan rancangan Felda Trolak Utara, Felda Trolak Selatan dan juga Felda Sungai Klah. Perintah pampasan selepas penyiasatan yang ditandatangani dan diturunkan mohor oleh Pemungut Hasil Tanah Daerah Batang Padang dan yang juga telah ditandatangani oleh LLN dan Felda terdapat di [ms 71, (IDB)].

S23: Merujuk kepada [ms 71, (IDB)] bolehkah anda menerangkan dengan terperinci berkenaan dokumen ini?

J: [ms 71, (IDB)] merupakan Perintah Pemungut Hasil Tanah bertarikh 27.01.1981 berkenaan pampasan yang diberikan kepada Pengarah Besar, Lembaga Kemajuan Tanah Persekutuan (Felda) berkenaan kawasan-kawasan tanah di Felda Trolak Utara, Felda Trolak Selatan dan Felda Sungai Klah yang terlibat di dalam laluan Talian 275kV tersebut. Pampasan telah diberikan kepada Pengarah Besar, Lembaga Kemajuan Tanah Persekutuan (Felda) mengikut susunan Blok bagi kawasan Felda Trolak Utara dan Trolak Selatan dan mengikut susunan Peringkat bagi Felda Sungai Klah mengikut perkiraan bersama pokok-pokok yang terlibat di dalam laluan Talian 275kV tersebut oleh LLN dan Felda. Bagi Felda Sungai Klah, Pemungut Hasil Tanah, Batang Padang telah memberikan jumlah pampasan sebanyak RM99,090.00 sepertimana yang dituntut oleh pihak Felda melalui surat Felda bertarikh 26.05.1979 [ms 69, (IDB)]. Keseluruhan pampasan yang telah diberikan kepada Pengarah Besar, Lembaga Kemajuan Tanah Persekutuan (Felda) bagi kawasan yang terlibat di Felda Trolak Utara, Felda Trolak Selatan dan Felda Sungai Klah adalah berjumlah RM223,470.00.

[24] It is to be noted proof of the enquiry held on 27 January 1981 at the Tapah Land Office in connection with Menara C is evident from the notice dated 9 January 1981 (exh D37) from the collector of land revenue, Batang Padang to LLN. In addition in the letter dated 28 March 1981 (exh D32) from LLN to Felda at para 2, there is a reference to the enquiry held on 27 January 1981 at the Tapah Land Office and pursuant thereto a cheque dated 17 March 1981 for RM223,470 and two copies of the compensation list were enclosed.

[25] With regard to LLN's statutory right of way to enter for the purposes of LLN's installation, broadly, s 52 of the 1949 Act deals with LLN's statutory right of way over state land whilst s 53 deals with LLN's statutory right of way over any land, other than state land. It begs the question what therefore is the status of the plaintiff's Lot when Menara C was erected in 1981. At this juncture it is appropriate to state in paras 78, 79 and 80 of PWS, learned counsel for the plaintiff basically contended that the Fourth Schedule notice should have been served on the plaintiff.

[26] I find there is no merit in the plaintiff's submission. As correctly submitted by learned counsel for the defendant there is no requirement to prepare and serve a specific notice with regard to state land (s 52) unlike any other land other than state land (s 53) where the Fourth Schedule notice is required.

[27] Further the issuance of the Fourth Schedule notice under s 53 of the 1949 Act by LLN to Felda by the collector of land revenue must be viewed from the perspective of Felda's interest under the Land (GSA) Act. Here I would like to reproduce the provisions identified by learned counsel for the defendant which to my mind enables one to appreciate land held under a group

settlement area and its impact on the determination of the status of the land in this case. Under s 34(1) of the Land (GSA) Act, the state authority may permit the development authority (Felda) to develop any state land as a group settlement area and for that purpose, the state authority may make an agreement with the development authority.

[28] In this regard SD5 (at p 67 of the NOP) stated:

S: Dalam tahun 1970an dan 1980an adakah pihak Felda mempunyai sebarang kepentingan di tanah rancangan berkelompok yang dikenali sebagai Felda Sungai Klah.

J: Ya.

S: Apakah kepentingan tersebut?

J: Perjanjian antara Felda dan Kerajaan Negeri Perak memberi hak Felda untuk menguruskan tanah.

S: Apakah tarikh perjanjian tersebut?

J: 9.8.1969.

Saya ada membawa perjanjian tersebut ke Mahkamah. (Perjanjian asal diserahkan kepada Mahkamah). Perjanjian ini di bawah Akta Tanah (Kawasan Penempatan Berkelompok) 1960.

[29] The area under the Land (GSA) Act is administered by a manager appointed by Felda (s 36). In administering the area under the Land (GSA), the manager shall have and exercise the powers conferred on him pursuant to the modification mentioned in s 38. It is significant to note s 38(1) reads:

(1) Notwithstanding that a Federal Development area is vested in the Development Authority, the provisions of Parts I to VI (excluding sections 3, 4, 5 and 6, section 7(3), section 12(2) and section 32) *shall, subject to this section, apply to that area as if such area were State land*". (Emphasis added).

10.4 The phrase 'as if such area were State land', in my opinion, fortifies the position that 'Rancangan Felda Sungai Klah' which was statutorily vested in Felda is for all intent and purposes State land.

[30] Under s 22(1) of the Land (GSA) Act Felda can decide on 'termination of occupation' and 're-entry' on the land occupied by the settlers in Felda Sungai Klah. Section 38(2)(c) states that in relation to s 10, the power of the collector to permit the occupation of any rural holding in expectation of title shall be exercisable instead by the manager of Felda. Section 38(2)(d) states that the provisions other than those mentioned in paras (b) and (c) shall be read subject to the modifications specified in the Second Schedule. Among the modifications specified in the Second Schedule of the Land (GSA) Act which

A are relevant are stated in paras 2 and 4(1) and (2) of the Second Schedule. Paragraph 2 of the Second Schedule states that all references to the director shall be construed as references to the chairman of Felda. Paragraph 4 of the Second Schedule states that except in ss 16 and 18 references to the collector or the penghulu shall be construed as reference to the manager of Felda. B Therefore, the plaintiff's occupation in expectation of title must be authorised by Felda and that authority may be cancelled by Felda at any time before the title has been registered (see s 12(3) read with Second Schedule of the Land (GSA) Act. Under ss 13, 20 and 22 (read with Second Schedule of the Land (GSA) Act) Felda in empowered to fix rates of premium, rent, the consolidated C annual charge, etc and recover the same from the settlers and to retake and re-enter the land in the event of default. Under s 10 of Land (GSA) Act read together with s 38(2)(c), the plaintiff's occupation of his Lot in 1981 in expectation of title was with permission of Felda.

D

[31] Considering all the powers of Felda under the provisions of the Land (GSA) Act as alluded to above, I agreed with the submission of learned counsel for the defendant at the time of the development and until all charges are paid to the state government/Felda, Felda Sungai Klah was still state land vested and E administered by Felda and not yet alienated to the individual holders who occupy the area in expectation of title.

[32] In *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 the Federal Court held:

F

> Notwithstanding that its alienation has been approved by the state authority, the land remains state land until registration under the National Land Code.

[33] Following *Sidek bin Haji Muhamad* it can be argued irrespective of the G plaintiff's status as a settler in expectation of tile under the Land (GSA) Act, and irrespective of whether the enquiry was held under s 52 or 53 of Act 1949, the fact remains in law Felda Sungai Klah was state land in 1981 until the land title was issued to the plaintiff's Lot in 1996.

H

[34] Further support for the proposition to why the vesting of the land in Felda does not change the status of the land from 'State land' to 'any other land, other than State land' can be found in the definition of 'State land' and 'reserved land'. They are as follows:

I (a) s 2 of the 1949 Act:

(i) 'State land' does not 'include reserved land';

(ii) 'reserved land' means land reserved for a public purpose, railway reserves and reserved forest';

(b) s 5 of the National Land Code (No 56 of 1965) ('National Land Code') —

(i) 'State land' means all land in the State (including so much of the bed of any river, and of the foreshore and bed of the sea, as is within the territories of the State or the limits of territorial waters) other than —

(a) alienated land;

(b) reserved land;

(c) mining land;

(d) any land which, under the provisions of any law relating to forests (whether passed before or after the commencement of this Act) is for the time being reserved forest.

(ii) 'reserved land' means land for the time being reserved for a public purpose in accordance with the provisions of section 62 or of any previous land law'.

[35] Section 40 of the National Land Code provides that 'There is and *shall be vested solely in the State Authority the entire property in* —

(a) *all State land within the territories of the State,*

(b) all minerals and rock material within or upon any land in the State the rights to which have not been specifically disposed of by the State Authority (Emphasis added.)

[36] There is an added dimension why the notice albeit issued under s 53 of the 1949 Act to Felda does not in any event taint the procedure adopted by LLN nor was the plaintiff deprived of his right to be heard and nor is the defendant in breach of the rules of natural justice. This is because pursuant to s 58 of the 1949 Act, the collector of land revenue shall conduct an inquiry to determine the amount of compensation payable.

[37] Learned counsel for the plaintiff submitted that the order dated 27 January 1981 of the collector of land revenue (exh D31) is not a valid order on the following grounds:

(a) that nowhere in the said order is it stated that it is an order giving LLN leave to enter into the plaintiff's lot;

(b) that there are no terms and conditions stated in the said order;

(c) that the details of the plaintiff's lot do not appear in the said order;

(d) that the said order does not contain any order made by the collector of land revenue for compensation for the use of the plaintiff's lot; and

(e) that there is no order made against the plaintiff allowing the plaintiff to allow LLN to enter his lot.

[38] With due respect to learned counsel for the plaintiff, I find the grounds relied on by the plaintiff is devoid of merit. Basically I agreed with the submission made on the defendant's behalf which is addressed in the order of the grounds raised by the plaintiff.

[39] For ground (a) I find there is no such requirement under the 1949 Act as even under s 53(5) of the same, in respect of alienated land, if there is no objection lodged within the time limited for the purpose by sub-s (4), the Board (LLN) may forthwith enter on the land and do all or any of the acts specified in the notice given under sub-s (2). In any event the land in question is state land and not alienated land and Felda consented to the construction of Menara C and all the demands of Felda were met by the defendant.

[40] For ground (b) Felda consented to the construction of Menara C and all demands of Felda were met. In any event, s 53(7) of the 1949 Act is discretionary and in 1981, in law the said land is state land and this condition does not apply to state land.

[41] For ground (c) evidence has been adduced through SD3, SD5 and SD6 that in 1981 Felda Sungai Klah was not surveyed.

[42] For ground (d) it is not disputed that the plaintiff's lot is part of Felda Sungai Klah which in 1981 was not surveyed and plaintiff's lot was not identifiable by any lot number; it was divided into either 'Blok-Blok' or 'Peringkat-Peringkat' as can be seen in exh D31. Besides the plaintiff admitted receiving RM2,520 as compensation from Felda which was paid by the defendant pursuant to the Order (see paras 7.1 till 9.1 above).

[43] For ground (e) I am of the view this contention is misplaced as in 1981 Felda Sungai Klah was vested and administered by Felda under the Land (GSA) Act.

[44] In addition the plaintiff's allegation that the defendant could have asked the pentadbir Batang Padang (SD1) questions about the inquiry held in 1981 defies logic because SD1 stated all records of the inquiry were handed to the national archives in 2004 for destruction.

[45] Learned counsel for the defendant contended the defendant has not challenged the said order (exh D31) by way of appeal and cannot be allowed to challenge its validity by collateral attack in the present proceedings. Learned counsel for the plaintiff opposed citing *Eu Finance Berhad v Lim Yoke Foo* [1982] 2 MLJ 37 (FC) at p 39 F–I right column to p 40 A–F left column and *Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v Tenaga Nasional Bhd; Ng Ah Boon (Third party)* [2010] 1 CLJ 625 (HC) at pp 643–645 at para 43) where in the latter case, the notice was not served on the proper party and what was produced was the record of inquiry.

[46] I agreed with the submission made on the defendant's behalf that both these cases can be distinguished on the facts. In *Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor*, notice to enter land for purposes of construction (s 11 of the 1990 Act) and the inquiry notice before the district land administrator for purposes of the determination of compensation payable (s 16 of the 1990 Act). However the s 11 notice was sent to one Wong Chiu Yiu, a director of noble idea instead of on the owner or occupier of the land ie noble idea; whilst the s 16 notice did not contain the registered or business of noble idea; no notice was issued to any interested person including noble idea. Undoubtedly, both the notices were held to be defective. In *Eu Finance*, the collector of land revenue after holding the first inquiry held a second inquiry which he was not entitled to.

[47] However in the present case, to reiterate the land in question was vested in Felda, it being state land and the ramifications of Felda Sungai Klah including the plaintiff's Lot being governed under the Land (GSA) Act has been addressed and for this purpose I adopt what is stated before regarding the same including the requirement for a s 53 notice, the validity of the exh D31 order, compensation having been paid as per the demand from Felda, the plaintiff being aware of the inquiry and having received compensation (less the necessary deductions) (NOP at p 14 lines 24–30). In the circumstances I am of the view it is too late in the day for the plaintiff to attack the validity of the order after 23 years (from 1981 to 2004 when the action was filed).

TREES FELLED IN 2003, 2004 AND 2005

[48] The defendant's case is that the compensation awarded by the collector of land revenue was in part for the cutting down of the 84 trees which were growing within the route of Menara C on the plaintiff's lot in 1981. The plaintiff however claimed (i) the said 84 trees which were cut down by LLN were not within but were outside the route of Menara C and (ii) the trees which were within the said route were left uncut by LLN and were cut by him only in 1999 when they became old about 25 years after planting. The plaintiff also contended that the defendant has entered into his Lot in 2003, 2004 and 2005

and chopped down the trees but did not seek his consent before chopping the 100 trees (72 rubber trees and 28 balak sentang) in 2005.

[49] The plaintiff in his evidence-in-chief (Q&A 35 WSSP1) stated 'the Defendan telah memotong kira-kira 48 (amended to '84' through supplementary question) pokok getah di Lot saya pada tahun 1982'. By supplementary questions in examination-in-chief, after being referred to the survey report dated 1 February 2007 (exh P3) made at his behest and after a series of questions posed to him (NOP at pp 3–5) the plaintiff said that the 84–88 trees which were cut by LLN 'Di luar kawasan saya sebab sekarang kita sudah jumpa batu sempadan'.

[50] Learned counsel for the defendant argued the plaintiff contradicted himself in cross-examination when he admitted 'daripada tahun 70 sehingga sekarang pekerja TNB masuk kawasan tanda titik dan tebang pokok' and when asked 'Adakah mereka menebang pokok di kawasan titik-titik sebelum 1999?', he admitted 'Ada banyak kali' (NOP at p 12 lines 5–19); and in re-examination further contradicted himself when he admitted 'LLN ada menebang pokok-pokok di kawasan titik sebelum 1999'.

[51] To examine if the plaintiff's evidence is inconsistent as alleged by the defendant, it is material to state some of the plaintiff's responses in re-examination:

S: Pada tahun 2003, 2004 dan 2005 Defendan (TNB) telah memotong pokok di dalam sempadan Lot kamu, betul?

J: Betul. …

S: … Sebelum tahun 1981 hingga 1982 adakah mereka iaitu pekerja TNB masuk kawasan kamu dan potong pokok?

J: Tidak.

S: Bagaimana dengan kawasan di luar Lot 5069, adakah pokok-pokok dipotong sebelum 1981–1982?

J: Tidak.

S: *Jadi bila kamu jawab semalam bahawa dari tahun 1970an pekerja TNB telah masuk dan potong pokok, tarikh-tarikh manakah yang dimaksudkan?*

J: *1970 hingga 2006.*

S: *Bilakah tarikh pertama bila pekerja itu masuk untuk potong pokok?*

J: *Tak ingat.*

S: *Adakah kamu ingat keterangan-keterangan kamu semalam bila kamu telah menyatakan bahawa pekerja LLN/TNB telah memotong pokok di kawasan longkang pada tahun 1981–1982.*

J: *Ya*.

S: Adakah apa-apa pemotongan berlaku sebelum itu iaitu 1981–1982 di mana-mana tempat sama ada di luar atau dalam Lot iaitu Lot 5069 yang ditunjuk di ms 59 Ikatan B?

J: Ada pemotongan di kawasan sempadan longkang iaitu kawasan sempadan lama.

S: Bilakah pemotongan ini berlaku?

J: Sering-kali pekerja TNB potong dari tahun 1974.

S: Dalam pernyataan saksi kamu telah menyatakan bahawa pokok-pokok di dalam Lot 5069 telah ditebang pada tahun 1999 dan penanaman semula telah dibuat. Siapa yang memotong pokok yang matang itu?

J: RISDA.

S: Berkenaan soalan dalam pemeriksaan balasa kamu telah disoal adakah mereka menebang pokok di kawasan titik sebelum 1999 dan kamu jawab ada banyak kali. Siapa yang dimaksudkan dengan perkataan "mereka", adakah RISDA atau LLN?

J: *LLN*.

S: *Soalan saya tadi adalah berkenaan dengan siapa yang potong pokok, soalan saya adalah berkenaan kawasan tilik di dalam sempadan Lot 5069 dan bukan kawasan longkang di luar Lot 5069. Jadi bolehkah kamu fikir dengan teliti dan jawab soalan itu siapa yang potong pokok matang di dalam Lot, adakah kamu faham soalan itu?*

J: *Ya, saya faham soalan itu, jawapannya RISDA.*

[52] From the answers given in re-examination above (see the parts underlined above) the plaintiff seemed to be 'prompted to answer' in the manner he did. When gauged against the backdrop that the plaintiff's latest position was only raised through supplementary questions on the day of trial, it is more probable of being an afterthought. I am fortified when the plaintiff's version is examined against the following evidence adduced by the defendant.

[53] SD4, the eksekutif talian at Jabatan Penghantaran TNB (examination-in-chief at pp 45–51 NOP) testified that she has to 'rentis talian penghantaraan TNB bermula dari 66kV (di seluruh negeri Perak) ke atas dalam keadaan yang baik' which meant 'memastikan rentis (kawasan selebar dua rantai yang di ukur dari kiri kanan tengah-tengah kaki menara') bebas daripada pokok bahaya dan sebarang struktur' which meant 'Pokok-pokok ketinggian melebihi lapan kaki yang berada di dalam rentis talian penghantaraan TNB' and 'Objek kekal atau sementara sememangnya tidak dibenarkan berada di dalam rentis talian penghantaraan TNB'. SD4 also said 'Pihak TNB perlu memeriksa menara dari mula sehingga penghujung talian tersebut berada di dalam keadaan yang baik di mana sekiranya terdapat kejanggalan (defect) pada menara tersebut kejanggalan tersebut perlu dibaiki sebelum sesebuah talian bermula tugas'.

[54] SD4 testified the evidence of the plaintiff cannot be true as the 'talian 275kV dari Bukit Beruntung ke Batu Gajah (Menara C)' was energised ('mula tugas') in 1982 and '[A]pabila sesebuah talian yang akan dimula tugas rentis talian tersebut mestilah bebas dari pokok-pokok merbahaya dan struktur' and 'Ini adalah kerana ianya perkara paling asas sebelum sesuatu talian dimula tugas. Pokok-pokok melebihi lapan kaki tidak boleh berada di bawah rentis talian yang telah dimula tugas kerana pastinya ia akan menyebabkan pelantikan talian (tripping) … Talian tersebut adalah talian grid nasional … bermakna talian tersebut membawa bekalan elektrik ke satu kawasan yang luas. Iaitu dari negeri ke negeri …) Pelantikan pada talian grid nasional) boleh menyebabkan bekalan elektrik ke negeri tersebut putus'.

[55] Learned counsel for the plaintiff criticised the creditworthiness of SD4 as 'riddled with inconsistencies' and that she testified from her memory and experience. There is no reason for the court to disbelieve what SD4 said considering the position and scope of responsibility and experience albeit from 2002 is with respect to the maintenance of 'rentis'; and the SOP before 2002 according to her is the same as '(Ianya) memang perkara yang paling asas. 'Perkara yang paling asas' itu ialah memastikan keadaan rentis berada di dalam keadaan yang baik sebelum sesuatu talian hendak dimula tugas'. Besides SD4 said that she had attended courses at the Jabatan Perhutanan Malaysia 'berkaitan dengan cara-cara penebangan pokok berarah' and there are 'rekod-rekod semakan yang perlu dipenuhi oleh pemeriksa' before a transmission line is energised which records are sent to the 'jabatan projek untuk pengesahan'. In short SD4 did not talk in a vacuum.

[56] Furthermore SD4's evidence is supported by the evidence of SD6 in answer to Q 27 WSSD6:

> J: Pokok-pokok getah atau sebarang pokok-pokok lain yang tinggi tidak sama sekali dibenarkan ditanam di bawah rentis talian elektrik yang didirikan oleh TNB. Ini adalah kerana pokok-pokok ini adalah membahayakan apabila terkena talian elektrik diatasnya dan seterusnya akan menyebabkan panca akra. Talian 275kV tersebut, talian 132kV dari Slim River ke Sungkai dan talian 132kV dari Kalompang ke Stesyen Hidro Sultan Idris Yusuf, Woh adalah merupakan sebahagian dari grid kebangsaan dan apa-apa kerosakkan atau gangguan kepada talian-talian ini akan menyebabkan panca akra dan gangguan bekalan elektrik kepada grid kebangsaan dan seterusnya kepada pengguna-pengguna eletrik.

In the light of the above, I agreed with the defendant's submission that it is highly improbable that the trees under the route of Menara C remained uncut until 1999.

[57] As for plaintiff's grievance regarding the 100 trees, SD4 stated that about 100 trees were chopped in August 2005. However these trees which were in the route of Menara C were chopped after the Suruhanjaya Tenaga Kawasan Perak gave a written notice to the plaintiff on 1 December 2004 (exh P19 at pp 51–52 bundle B) instructing the plaintiff to cut the trees but which the plaintiff himself admitted he refused to comply with the said notice because 'pokok-pokok itu berada di Lot saya dan sebagai tuan punya berdaftar Lot itu saya tidak perlu mematuhi notis itu yang saya percaya telah dikeluarkan dengan berasas pada fakta-fakta yang salah'.

[58] Premised on the evidence of SD4 and SD6, it is clear that the plaintiff's belief is misplaced as the notice issued to him is to notify that his activity of planting trees within the route which were more than 8ft posed a danger to the third transmission line (Menara C). Further under s 37(12)(a) of the 1990 Act 'it is an offence to engage in activity in the vicinity of any electrical installation in a manner likely to interfere with any electrical installation or cause danger to any person or property'. This was confirmed by SD6 in examination-in-chief in Q&A(s) 27 and 28 WSSD6.

[59] In any event, under the proviso to s 58(1) of the 1949 Act no further compensation shall be allowed or payable for felling or lopping of trees after payment of the compensation under ss 52, 53 or 54.

ADEQUACY OF COMPENSATION

[60] The plaintiff's learned counsel argued if this court is minded to hold that the inquiry by the collector of land revenue on 27 January 1981 is valid, the plaintiff submitted in any event the compensation paid by the defendant is inadequate. Since I have held the order of 27 January 1981 to be valid, I shall now consider the adequacy of the compensation.

[61] Under s 53(1) of the 1949 Act, in assessing the compensation for disturbance, damage or disability for a land which is not state land, it is within the collector's right not to award any compensation if the situation warrants it. Support for this is found in the case of *Oakfield Enterprises Sdn Bhd v Tenaga Nasional Bhd* (Johor Bahru High Court Civil Suit No 22–239 of 1989). Basically, the plaintiff's claim, inter alia, is LLN had failed to comply with the 1949 Act (about a year after the filing of the action, the 1949 Act was repealed by the 1990 Act and by s 3 of the Electricity Supply (Successor Company) Act 1990 all property, rights and liabilities of the LLN was transferred to TNB) and failed to pay compensation to Mosbert Bhd, the owner of the land at the material time. LLN contended, inter alia, that they entered the land in question

and erected pylons in 1972 pursuant to the provisions of the 1949 Act and had complied with all statutory requirements. The main issue was whether LLN complied with the requirements of s 53 of the 1949 Act (the land in question being private land) when they entered the land and erected the pylons which the court answered in the affirmative. His Lordship, Dato' Mohd Ghazali bin Mohd Yusoff (now FCJ) answered in the affirmative and at p 41 of the judgment stated:

> (f) … Section 58 provides that the amount of compensation shall be assessed by the collector after such enquiry as he shall deem sufficient. The assistant land administrator, Johor Bahru (SD2) informed the court that his records show that Mosbert Bhd was not paid any compensation as there were no trees growing on the said land, ie, it was empty. To me, the decision of the collector in not awarding any compensation after such enquiry, does not fall outside the contemplation of *s 53(1) read together with s 58*, ie, it is within the collector's right not to award any compensation if the situation warrants it. (Emphasis added.)
>
> (g) After the enquiry, the collector, vide letter dated 9 November 1974, authorised the LLN to proceed with their proposed project which, to me, was made in accordance with s 53(7) of the Act. That subsection also provides that a dissatisfied party may appeal to the state authority against such order. There is however nothing in the evidence to show that Mosbert Bhd made such an appeal.

[62] The said decision was upheld by the Court of Appeal on 5 November 2009 where at p 6 of the judgment, His Lordship Dato' Hashim bin Dato' Hj Yusoff (now FCJ) said:

> 12. The fact that the collector had listed out the exact number of trees on each lot (see ar bahagian C pages 396-402) for the purpose of compensation clearly shows that there had been a proper enquiry done by the land office. The letter from the land office dated 2 May 1974 to the LLN asking for the payment of the compensation show that Mosbert Bhd's name is not included in it. This is because as seen at p 390 of bahagian C of appeal records, Lot No 83, No title G 72 and Lot No 66, title No G 183 both registered under Mosbert Bhd as the owner, shows the word 'kosong') ie no trees were involved.
>
> 13. Based on the above, we find that s 53 of the Act had been complied with by the Respondent and the learned trial judge had not made any error in arriving at the same.

[63] Reverting to the instant case, to reiterate the compensation awarded by the collector of land revenue in respect of Felda Sungai Klah is in accordance to what was demanded by its letter dated 26 May 1979 (exh D28) ie (i) that

RM30 is paid for each tree felled, and (ii) that the settlers are provided with electricity. The collector in his order dated 27 January 1981 (exh D31) awarded compensation at the rate of RM30 per tree as demanded by Felda vide exh D28. Section 52 of the 1949 Act deals with state land and provides for disturbance or damage to the property. In contrast to *Oakfield Enterprises Sdn Bhd*, on the factual matrix of this case, it is my finding that Felda Sungai Klah was state land. Thus in my judgment, the compensation made by the collector of land revenue in his order (exh D31) is in accordance with s 52 of the 1949 Act, wherein LLN is only liable to pay Felda for disturbance or damages read together with s 58 of the 1949 Act.

THE CONSTITUTIONAL POINT

[64] Learned counsel for the plaintiff, inter alia, submitted:

(a) premised on *Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terendang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990 [2010] 2 MLJ 155)* [2010] 2 CLJ 1 (FC) the defendant is estopped from claiming that the compensation payable by it under ss 52, 53, 54 and 58 of the 1949 Act (ss 53, 54 and 58 corresponding with ss 11, 13 and 16 of the 1990 Act respectively) can be anything less adequate compensation payable under the Land Acquisition Act;

(b) based on the defendant's stand on *Ong See Teong* that adequate compensation must be made to persons affected by their activities, the defendant's submission based on the High Court and Court of Appeal decisions in *Oakfield Enterprises Sdn Bhd* cannot stand (see paras 87 – 96 of PWS).

[65] In *Ong See Teong*, the applicants were owners and occupiers of plots of land in a new village in Rawang, Selangor. In 1974, LLN installed steel poles on the said land to carry a 33kV transmission line which ran across the new village. In 1986, the State Government of Selangor alienated the said land to the applicants. Around 2005, TNB implemented a project which required a high voltage grid with a capacity of 270kV to be installed through the new village along the same path as the existing 33kV transmission line. The owners and residents of the new village protested against this proposal. In June 2007, TNB issued a notice pursuant to s 13 of the 1990 Act (corresponding with s 54 of the 1949 Act) to the applicants. The applicants filed an application in the High Court for judicial review to quash the appellant's decision in issuing the said

notice; to declare the notice null and void; and for an injunction restraining TNB from carrying out the proposed works under s 13 of the 1990 Act. The applicants claimed that TNB had under the guise of 'upgrading' the existing transmission line attempted to enter into the said land with an ulterior motive to acquire it and no compensation for such acquisition was ever adequate.

[66] As correctly submitted on behalf of the defendant, all references to *Ong See Teong* are misplaced and are irrelevant as the land in question was alienated land. The facts of this instant case are different. In 1981 the plaintiff's Lot was part of Rancangan Sungai Klah which was statutorily vested and administered by Felda under the Land (GSA) Act and was only alienated and title was issued to the plaintiff in 1996. It is my finding that the the plaintiff's lot was situated in state land and I adopt my reasoning alluded in paras 9–47 above.

[67] Section 78(3) of the National Land Code states:

> The alienation of State land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to in sub-section (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time.

(see *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors & Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123 at pp 128 F–G). In this regard I adopt the position stated in paras 60–63 above.

> (see *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors. & Lesco Development Corporation Sdn Bhd v. Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123 at pp 128 F–G). In this regard I adopt the position stated in paras 19 to 19.3 above.

[68] Learned counsel for the plaintiff contended the plaintiff as a Felda settler would have qualified for compensation even before the Lot was alienated to him, as land occupied in expectation of title is alienated land within the meaning of s 2 of the Land Acquisition Act 1960 (para 96 PWS). I find this contention is flawed. As it is correctly argued on the defendant's behalf, the present case concerned a right of way under the 1949 Act and not acquisition of land under the Land Acquisition Act. A distinction has to be drawn because under the former statute, the defendant did not acquire the plaintiff's lot but

only a right of way whilst the plaintiff retains the title to the route to Menara C and can utilise the same as long as the plants do not grow beyond 8ft.

[69] The plaintiff's reliance on s 44(1) of the National Land Code is also without merit (para 103 PWS). The defendant correctly argued that s 44(1) is applicable to alienated land whereas the compensation under the 1949 Act is in respect of land which was a state land.

MODIFICATION TO SS 52, 53, 54 AND 58 OF THE 1949 ACT

[70] The plaintiff is asserting that ss 52, 53, 54 and 58 of the 1949 Act are unconstitutional for not providing adequate compensation in accordance with art 13 of the Federal Constitution. Article 13 provides:

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[71] I am of the view the issue of compensation not being adequate does not arise as the settlers including the plaintiff have been amply compensated. In this regard, I adopt paras 60–63 above pertaining to adequacy of compensation. Both the demands of Felda with respect to compensation in terms of the rate of tree felled and to provide electricity supply to the settlers were met. As urged on the defendant's behalf, this court can take judicial notice that a reasonably high cost would be incurred in connecting the settlers' lots including the plaintiff's with electricity supply which ultimately contributed to the enhancement of the plaintiff's socio-economic status and the settlement as a whole.

[72] The case of *Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors* [1998] 2 MLJ 158 (CA) can be distinguished on the grounds as submitted by the learned counsel for defendant:

(a) the compensation paid in the case herein was in accordance with what was demanded by Felda. The compensation was accepted without any objection by Felda and apportioned to the settlers accordingly.

(b) the plaintiff's Lot was a *state land* statutorily vested and administered by Felda.

(c) *Adong Bin Kuwau*'s case was decided on the basis that the plaintiff, being aboriginal people of this country are seized of common law rights over land.

(d) In the present case, the parties are concerned with the defendant's *right of way* pursuant to the *Electricity Act 1949* wherein the plaintiff still retains the title to the land.

A (e) At all material times, the plaintiff had knowledge of the transmission line (Menara C) and had received compensation in 1981 and is now estopped from raising the issue.

(f) In the present case, the defendant had acted on the collector's order dated 27 January 1981.

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[73] As for the case of *Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors* [2005] 6 MLJ 289; [2005] 4 CLJ 169 at p 191(CA) (it followed *Adong Kuwau*'s case), where the aboriginal people were displaced and evicted by the second C appellant, the Lembaga Lebuhraya Malaysia to make way for a highway to the new airport. In the present case, to reiterate, I agreed with learned counsel for the defendant that '[T]he defendant and Felda reached an amicable settlement in respect of the compensation payable. The parties … are concerned with the defendant's right of way pursuant to the Electricity Act 1949 wherein the D plaintiff still retains the title to the land'.

[74] In any event, the issue on modification to ss 52, 53, 54 and 58 of the 1949 Act has not been pleaded and is therefore outside the ambit of the E plaintiff's statement of claim. For this I would rely on the case of *Sagong Tasi* cited by the plaintiff himself. His Lordship Gopal Sri Ram JCA (as he then was), whilst disagreeing with the learned trial judge's reasoning for refusing to award damages for plaintiffs' claim for trespass against the first and fourth defendants, remarked at pp 197, a – b:

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> For, there is a stronger reason for supporting the judge's decision on this point. Nowhere in their pleaded case have the plaintiffs claimed damages for trespass against the first and fourth defendants. That, I think, is the end of their complaint against the judge's refusal to make a finding in their favour on this point. I would therefore affirm the trial judge's decision on this part of the case.

G

[75] On the issue of right of way, it is appropriate to state that the plaintiff claims there is no compliance of s 53(9A) of the 1949 Act in that there is no endorsement or notation on the plaintiff's title in respect of the defendant's H right of way on the plaintiff's Lot (para 29 of PWS). In this regard I adopt the evidence pertaining to Felda Sungai Klah being divided into 'Blok-Blok' or 'Peringkat' as at para 16 above. Further the evidence shows that the collector of land revenue Batang Padang had conducted an inquiry on 27 January 1981 under the 1949 Act and s 53(9A) was not in existence then as it only came into I force on 1 April 1984. In *Oakfield Enterprises Sdn Bhd*, a similar objection was taken. I adopt the position taken by the learned judge in the said case at pp 47–48 of the judgment and also hold the defendant cannot be faulted for omitting to submit those documents for endorsement as there was no such provision at the material time.

[76] In conclusion, for all the foregoing reasons stated, I had made the order as mentioned at para 2 above.

Plaintiff's appeal allowed with costs to be taxed.

Reported by Ashgar Ali Ali Mohamed